

‘Rent’ Definition Row Attracts Tenant Advocates, Trade Groups

By [Charlie Innis](#) · 2023-08-29

Legal services nonprofits and multifamily industry groups filed dueling amicus briefs in a dispute in Maryland Supreme Court over whether a Kushner family-owned property management firm misinterpreted what landlords can charge tenants as "rent" under state law.

Several tenant advocacy groups [weighed in](#) on the case Friday in support of the renters who launched the underlying litigation, while trade associations argued in [a brief](#) Thursday on the side of Westminster Management LLC, a Kushner Cos.-owned residential landlord.



Maryland Supreme Court building. Legal services nonprofits and multifamily industry groups have filed dueling amicus briefs in a dispute in Maryland's high court over whether Westminster Management LLC misinterpreted what landlords can charge tenants as rent under state law.

The amicus briefs come as Westminster and several renters battle over whether a Maryland appellate court was right to [reverse a lower court's summary judgment ruling](#) that sided with the property management firm.

A three-judge panel found in February that the renters made viable claims that the Kushner-owned firm violated Maryland's real property law by imposing numerous fees

on tenants under the umbrella of "additional rent" charges in their leases, including late fees, agent fees and court summons fees when landlords moved to evict tenants.

The appellate court's decision also reversed the lower court's rejection of the renters' bid for class certification.

Amicus Briefs

Somil Trivedi, the chief legal and advocacy director of [Maryland Legal Aid](#), one of the groups supporting the renters, said the state courts have clearly defined what constitutes rent and that landlords are trying to get around that.

"But low-income tenants who are just struggling to keep a roof over their heads aren't in a position to negotiate ... the true definition of rent. They just need a roof, and so they sign these leases," Trivedi said in an interview.

Tenants have "virtually no bargaining power" in the rental market, partly because Maryland doesn't have enough affordable housing to meet demand, he said.

"Landlords are basically able to force their definition of rent on people, even though the courts have said, 'No, that's not accurate,'" he added.

The legal services groups who filed the brief include Civil Justice Inc., Economic Action Maryland and the Homeless Persons Representation Project Inc.

The tenant advocates argued that Westminster views rent to mean "anything a landlord wishes it" to be, and if the company prevailed in the dispute, the result would be socially destructive to Maryland, leading to more evictions and homelessness.

According to the advocacy groups, Westminster has contended that Maryland housing courts can determine whether a lease's terms are coercive on a case-by-case basis, but that assertion is unrealistic due to the sheer number of eviction proceedings occurring in the state. More than 1,000 cases appear on the rent court docket in a single day in

Baltimore City, the nonprofits said.

"That volume of cases does not allow for trials at which a potentially complex factual question — whether the landlord overreached or coerced a tenant — can be resolved," the legal services groups said.

Several industry groups disagree. The National Apartment Association, Maryland Multi-Housing Association and [Apartment and Office Building Association of Metropolitan Washington](#) argued in their amicus brief last week that the appellate court upended decades of settled law to redefine the meaning of "rent."

By doing so, the appellate court "altered the longstanding understanding of proper assessment and allocation of late fees and court costs and called into question the legality of industry standard lease provisions in the residential landlord-tenant context," the groups said.

The trade organizations told the Maryland Supreme Court that the appellate panel's opinion created confusion in the court system and impermissibly interfered with private contracts.

"Moreover, by defining 'rent' and 'costs,' the opinion effectively judicially legislates where Maryland's General Assembly has repeatedly declined to do so," the groups said.

Litigation History

Renters Tenae Smith and Howard Smith filed their initial complaint against Westminster in 2017, claiming that the terms of their leases with the property management firm violated Maryland's real property law, Consumer Protection Act and Consumer Fair Debt Collection Act. They sued on behalf of other similarly situated tenants of the Kushner-owned company, according to the appellate court's summary of the suit.

After a couple of years of back-and-forth in the Baltimore City Circuit Court, the state court denied the renters' motion for summary judgment and bid for class certification

and ruled in favor of Westminster. The renters appealed, leading to the appellate's reversal earlier this year.

Westminster then brought the dispute to the Maryland Supreme Court. The property management firm said in [its brief](#) that the appellate court's opinion "announced a bright-line definition of 'rent' in the residential context" under the state statute governing how landlords can legally evict tenants for failing to pay.

By doing so, the court "effectively stepped into the shoes of the General Assembly" and did what lawmakers have "refused to do in recent years," Westminster said.

"Even if this court were to find that the appellate court was correct, which Westminster disputes, clarity must be provided for courts and landlords to know exactly what is (and is not) included in the definition of 'rent,'" the property management firm said.

In their response, the renters told the Maryland Supreme Court that Westminster broke state law by charging more than the 5% late fees the company could legally require from tenants.

The renters said the realty firm also illegally defined all its charges as "rent" and wrongfully applied payments that tenants made for their monthly rent toward the outstanding fees, which then left rent balances due.

According to the [renters' brief](#), the legislative history behind Maryland's real property law leads to the conclusion that added charges related to late payments are an additional penalty and that "'rent means rent' — i.e., the fixed periodic payment for the tenant's use of the property."

"The Appellate Court's opinion to that effect (following this court's analysis in *Lockett v. Blue Ocean Bristol*) was not 'legislating' or 'acting as the General Assembly,' as Westminster argues," the renters said. "Rather, it was doing what courts do: interpreting the meaning of a statute."

A representative for the National Apartment Association and counsel for the industry groups didn't immediately return a request for comment, nor did counsel for the renters. Attorneys for Westminster declined to comment Tuesday.

The legal services groups are represented by Lee H. Ogburn and Somil Trivedi of Maryland Legal Aid and Daniel Rosenberg.

The trade associations are represented by Avery Barton Strachan and Kerri L. Smith of [Silverman Thompson Slutkin White LLC](#).

Westminster is represented by Michael E. Blumenfeld and Timothy M. Hurley of [Nelson Mullins Riley & Scarborough LLP](#) and Tonya Kelly Cronin and Christopher C. Dahl of [Baker Donelson Bearman Caldwell & Berkowitz PC](#).

The renters are represented by Andrew D. Freeman, Anisha S. Queen and James O. Strawbridge of [Brown Goldstein & Levy LLP](#), Jane Santoni, Matthew T. Vocci and Chelsea Ortega of [Santoni Vocci & Ortega LLC](#), and C. Matthew Hill of [Public Justice Center](#).

The case is Westminster Management LLC et al. v. Tenae Smith et al., case number SCM-REG-0004-2023, in the Supreme Court of Maryland.

The appellate court case is Tenae Smith et al. v. Westminster Management LLC et al., case number 2508, in the Appellate Court of Maryland.

--Additional reporting by Isaac Monterose. Editing by John C. Davenport.